

EXHIBIT A

Randy A. Notzen

From: Randy A. Notzen
Sent: Friday, March 07, 2008 9:20 AM
To: 'chet.cekala@teradyne.com'
Subject: U.S. Patent Appln. No. 10/671,154, for "Method and Apparatus For Network Throughput Measurement"; O/R 073251

Importance: High

Attachments: 20080306090823599.pdf; 20080306092211837.pdf



20080306090823592008030609221183
9.pdf (191 KB)... 7.pdf (354 KB)...

Dear Chet

Thanks for taking my call this morning.

Attached are two PDF files containing the section of the Office Action that issued in connection with the subject application that includes the "Requirement For Information" that we discussed and the IDS that we believe was the genesis of the Requirement.

Since the ultimate deadline for responding to the Office Action is April 9, 2008, your timely assistance to identify information that is responsive to the Requirement and collecting this information for dispatch to the USPTO would be most appreciated.

Sincerely,

Randy Notzen
The Webb Law Firm
436 Seventh Ave., Suite 700
Pittsburgh, Pennsylvania, USA, 15219
V: 412-471-8815
DD: 412-227-3025
Fax: 412-471-4094

STATEMENT OF CONFIDENTIALITY

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DETAILED ACTION

Information Disclosure Statement

Applicant's submitted information disclosure statement has not been considered as it fails to meet the proper form of IDS. Applicant should re-submit IDS in PTO-Form 1449.

Requirement for Information

1. In order for the Examiner to properly consider patentability of the claimed invention, additional information regarding this issue is required as follows: Pages 2-3, Applicant discusses the incorporation of throughput measurement into a product called NetFlare, sold by Teradyne, the assignee of the instant application. Telus, a Canadian operator of a DSL network, used NetFlare product to provide customer service for subscribers to its network. And in late 2001, there was an agreement between the two companies (Telus and Teradyne) to install NetFlare for a trial.

Applicant is required under 37 CFR 1.105 rule to provide information on the agreement, including sales transactions, confidentiality agreements, terms of the agreement, etc. Further, any dates corresponding to the creation and transmission any documentation provided with regard to any transactions, agreements, terms, or other information submitted is required.

Further, on page 3 of Applicant's IDS, it is stated that a Telus specific software upgrade was provided to Telus, the upgrade including a throughput measurement technique, in July 2003. However, applicant also states that at some time after September 30, 2002

and before December 31, 2002, the inventors adapted the time based throughput measurement technique used in NetFlare to be more similar to the one provided to Telus. These two statements appear to contradict each other, as the adapting of NetFlare to be similar to the solution provided to Telus would have been utilized before the solution provided to Telus was developed. Therefore, information on this upgrade for Telus as well as information on the adapting of the time based throughput measurement technique used in NetFlare, as well as the dates associated with the creation, publication, and any other public disclosure of the information, is required under 37 CFR 1.105.

Applicant is reminded that failure to fully reply to this requirement for information will result in a holding of abandonment. Further, any response to this requirement for information must be submitted with the next reply to this Office Action to be compliant.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 2 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 2 talks about computed data rate however, it is not clear to the Examiner what the phrase "which a data rate was computed" is referring to as there was not mention of such computation in the independent claim.

DOCKET NO: T0529.70003US00

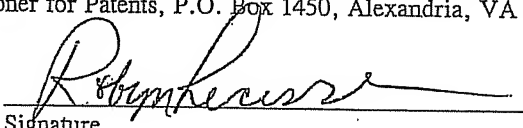
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Amarnath R. Arskiere and Igor A. Shvyrykov
Serial No: 10/671,154
Confirmation No: 7552
Filed: September 25, 2003
For: METHOD AND APPARATUS FOR NETWORK
THROUGHPUT MEASUREMENT

Examiner: Not Yet Assigned
Art Unit: 2857

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the 21st day of January, 2004.


Signature

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

STATEMENT FILED PURSUANT TO THE DUTY OF
DISCLOSURE UNDER 37 CFR §§1.56, 1.97 AND 1.98

Sir:

Pursuant to the duty of disclosure under 37 C.F.R. §§1.56, 1.97 and 1.98, the Applicant requests consideration of this Information Disclosure Statement.

PART I: Compliance with 37 C.F.R. §1.97

This Information Disclosure Statement has been filed before the mailing date of a first Office Action on the merits in the above-identified case.

No fee or certification is required.

PART II: Information Cited

The applicant would like to bring to the Examiner's attention the following other information, whose relevance is discussed in Part III below:

PART III: Explanation of Non-English Language References and Remarks Concerning Other Information Cited

The following are remarks concerning the other information cited:

PART IV: Remarks

Documents cited anywhere in the Information Disclosure Statement are enclosed unless otherwise indicated. It is respectfully requested that:

1. The Examiner consider completely the cited information, along with any other information, in reaching a determination concerning the patentability of the present claims;
2. The enclosed form PTO-1449 be signed by the Examiner to evidence that the cited information has been fully considered by the Patent and Trademark Office during the examination of this application;
3. The citations for the information be printed on any patent which issues from this application.

Applicants wish to inform the PTO of the following facts:

A technique referred to by the inventors as "time based throughput measurement" has been incorporated into a product called NetFlare sold by their employer, Teradyne, Inc.

In 2001, Teradyne, Inc. began discussions with Telus, a Canadian operator of a DSL network, about using NetFlare to provide customer service for subscribers to its network. At that time, NetFlare included a throughput measurement technique that required the transmission of a block of data. The amount of data used to measure throughput was intended to be specified at the time the product was installed. The same amount of data was thereafter used for all throughput measurements.

In late 2001, Telus agreed to allow Teradyne to install NetFlare for a trial in its DSL network in Canada. In the early part of 2002, Teradyne employees, including one of the

inventors, monitored use of NetFlare by Telus employees providing customer service to Telus subscribers. At the conclusion of the trial:

- a) Telus elected to buy the equipment that had already been installed and placed an order for additional NetFlare units.
- b) Teradyne employees noticed several weaknesses with the throughput measurement technique that was included in the trial.

The inventors then began to develop the technique described in the present patent application. At the time, the inventors believed that the conventional throughput measurement technique in NetFlare was not adequate for Telus because of an anomaly with Telus' network. In July 2003, a Telus specific software upgrade was provided to Telus. That upgrade was intended to change the throughput measurement technique used in the NetFlare units installed in Telus' network in Canada. This upgrade included a throughput measurement technique in which throughput was calculated by averaging the transmission time for multiple blocks of data. The technique stopped collecting data either when sufficient data was collected or when a predetermined period of time had passed.

The upgrade was provided to Telus in Canada. The software in which the upgrade was provided is considered Teradyne proprietary software. The people using the software would not be able to observe the technique used for throughput measurement.

At some time after September 30, 2002 and before December 31 2002, the inventors adapted the time based throughput measurement technique used in NetFlare to be more similar to the one provided to Telus. In the modified version, the size of the blocks of data could be configured so that the technique would operate on many types of networks. The product became configurable for networks having different packet sizes. It became configurable for "bursty" and "non-bursty" networks. Thereafter, the feature was incorporated into NetFlare products presented to network operators other than Telus.

Throughout this time, the inventors were resident in the US and primarily worked from Teradyne's office in Deerfield, IL.

By submitting this Information Disclosure Statement, the Applicant makes no representation that a search has been performed, of the extent of any search performed, or that more relevant information does not exist.

By submitting this Information Disclosure Statement, the Applicant makes no representation that the information cited in the Statement is, or is considered to be, material to patentability as defined in 37 C.F.R. §1.56(b).

By submitting this Information Disclosure Statement, the Applicant makes no representation that the information cited in the Statement is, or is considered to be, in fact, prior art as defined by 35 U.S.C. §102.

Notwithstanding any statements by the Applicant, the Examiner is urged to form his own conclusion regarding the relevance of the cited information.

An early and favorable action is hereby requested.

Respectfully submitted,
Amarnath R. Arskiere, et al., Applicant(s)

By: 

Edmund J. Walsh, Reg. No. 32,950
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, Massachusetts 02210-2211
Telephone: (617) 720-3500

Docket No. T0529.70003US00
Date: January 26, 2004
XNDDX

EXHIBIT B

Randy A. Notzen

From: Randy A. Notzen
Sent: Friday, March 14, 2008 12:43 PM
To: 'chet.cekala@teradyne.com'
Subject: RE: U.S. Patent Appln. No. 10/671,154, for "Method and Apparatus For Network Throughput Measurement"; O/R 073251

Importance: High

Attachments: U.S. Patent Appln. No. 10/671,154, for "Method and Apparatus For Network Throughput Measurement"; O/R 073251



U.S. Patent Appln.
No. 10/671,...

Dear Chet,

Further to the attached March 7, 2008 email and its attachments, would you please advise where things stand on your end regarding obtaining information responsive to the "Requirement For information" we discussed recently.

Thanks for letting me be a pest - as you can probably surmise I just want to ensure that we have the information needed in time to file a proper response.

Many Thanks.

Sincerely,

Randy Notzen, Esq.
The Webb Law Firm
436 Seventh Ave., Suite 700
Pittsburgh, Pennsylvania, USA, 15219
V: 412-471-8815
DD: 412-227-3025
Fax: 412-471-4094

STATEMENT OF CONFIDENTIALITY

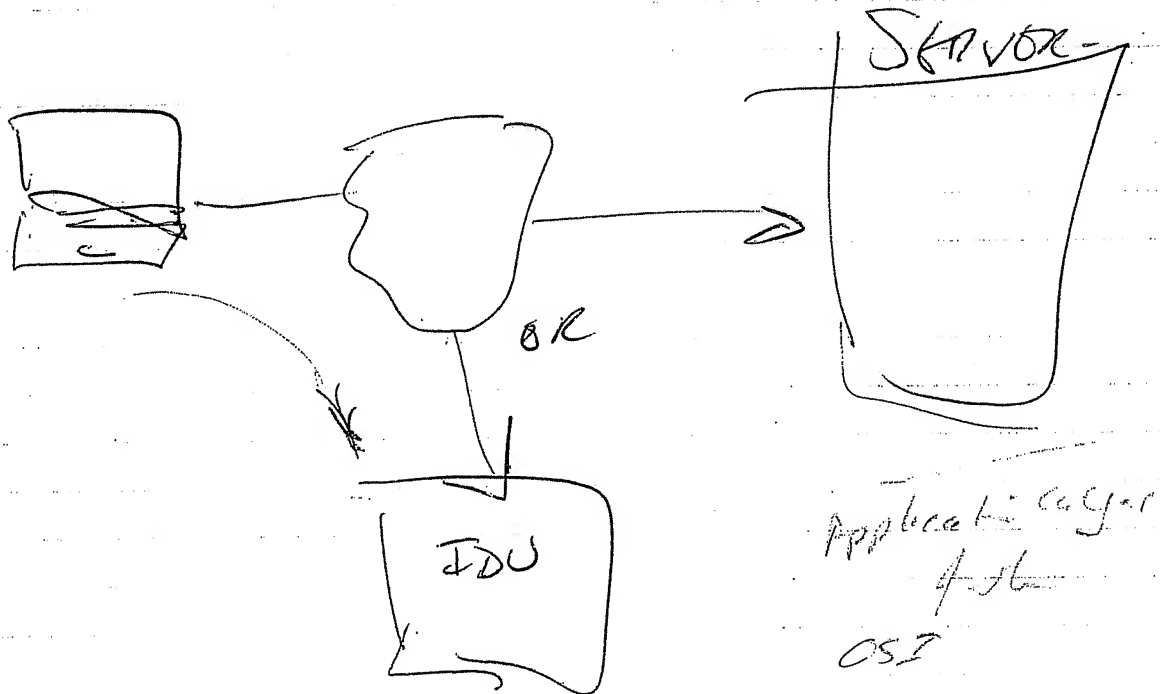
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EXHIBIT C

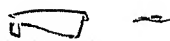
9-9-03

Telephone Call with AMAR.

+ FGR



ADSL



< 2K

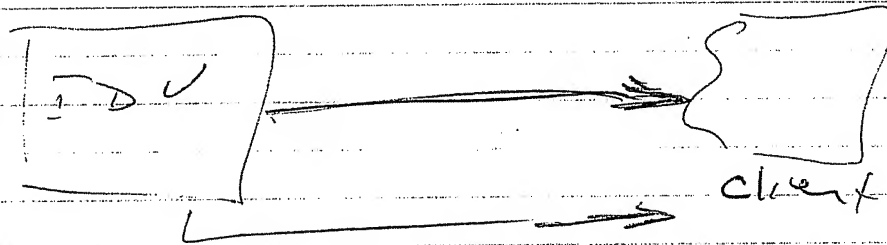
PAYLOAD:

Algorithm is smart enough to send packets
in serial or time

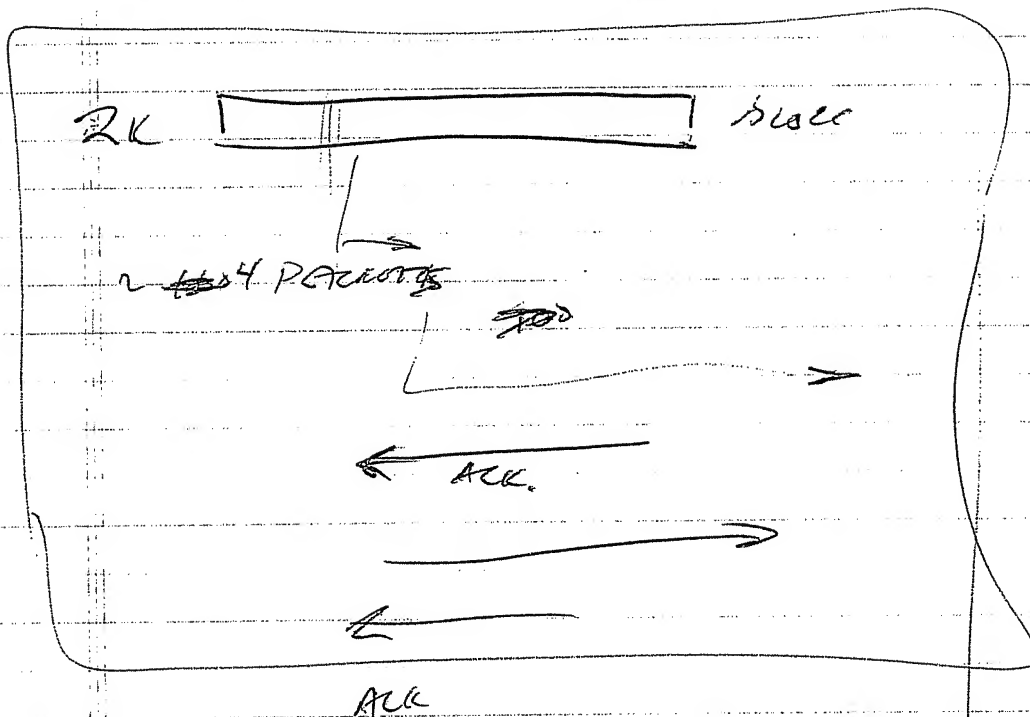
↳ times it based on time ~
fill

Receiving end.

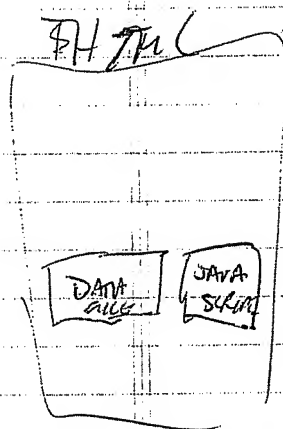
Time stamp is checked at the Server
regardless of whether it is stream or
non stream.



2K = BLOCKS



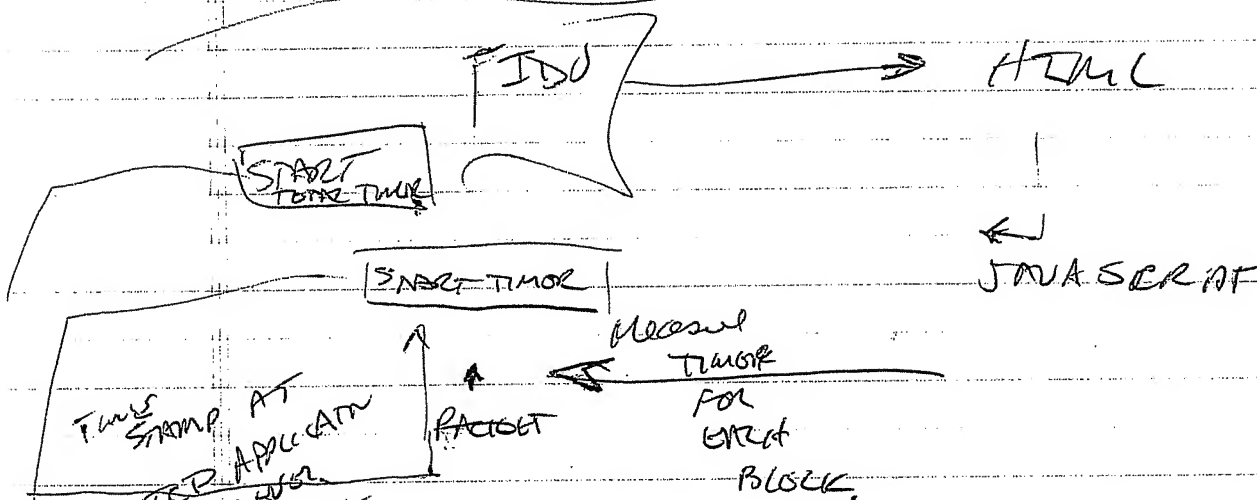
How does client know that it doesn't need to keep sending.



- Look at it as documen^ting it for disconnection the connecti^{on}.

→ only a small number of browsers has a problem.

Breckin



WANT ONE BLOCK TO
BE THE SIZE OF A PACKET.

Do not wait BLOCK to be solved in
US Buffer.

They showed a weakness in the throughput measurement
 Gave the the the
 Upgrade to this algorithm.

We can say about release it was in.

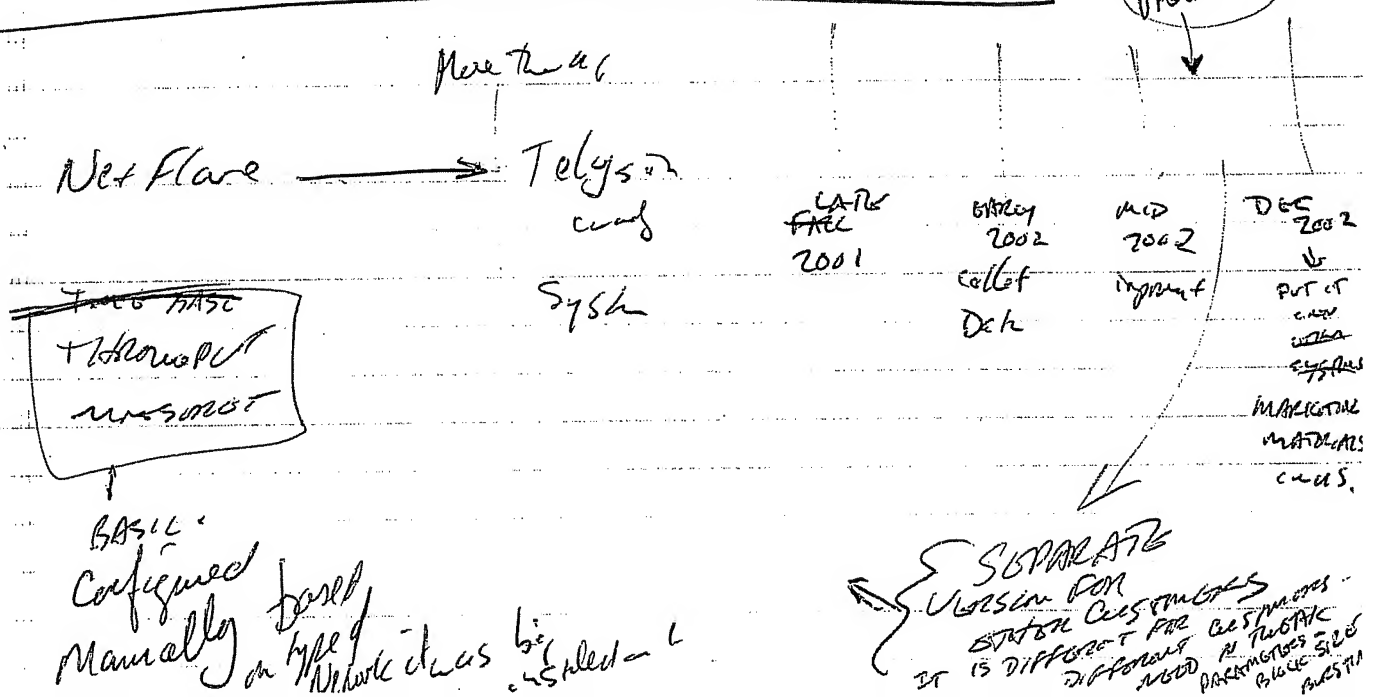
Customer Telesys in Canada.

=> Moby literature. at 8-9 months ago.
 =>

Telesys to Smith Sales Agency going in US.

There was no Time based throughput measurement
 & Thayer had this as a Telesys
 specific solution.

Who went to Cable Customers received a Telesys Customer Upgrade. ^{small} ^{package}



Block Size + Packet size should be the same.

Avoid need to control TCP stack

→ How = Make block size small.
— 1.5k w/ overhead ←

→ Standard Ethernet frame size. ←
preferably: _____

STARTS

In

PRODUCT →

~~DRINKS~~

LAST YEAR: More than a year.

Sept 2001? → ORIGINAL

TELES DID NOT
HAVE THIS ALGORITHM

Starting in February 2003 =
Started data collection.

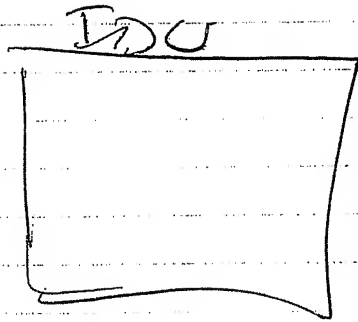
Took some time to get the
panel device

TRIAL -

• 3-4 Months

urchased ~~Product~~ On TRIAL Unit
BUT NOT Awaiting UNIT.

U P S PROGRAM



Payload is incorporated

- Client goes to a web page +
Clicks on Submit.

Server sends a HTML - PAGE

- DISPLAYS

Page has hidden form that
includes the payload.

like a person hitting Submit

Initial Test
involved
visiting a
web application

JAVA
SCRIPT

- Receiving End Says: I've received enough.

Receive Data when here enough - breaks the connection.

: Does not work on all browsers. → displays a pop-up window
Break the logical connection.

Telcosys handling DSC - no issue of
Burstiness

q: 15 for throwing at
data if not bursty
By default it is off.

Conicost => 20 late 2002 Early 2003

Recall that it is not
about data but about cost.